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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/841,787	04/24/2001	Makoto Yamamori	85765-000200	7870

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EXAMINER

GRUNBERG, ANNE MARIE

ART UNIT	PAPER NUMBER
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1661

DATE MAILED: 09/24/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/841,787

Applicant(s)
Makoto Yamamori

Examiner
Anne Marie Grunberg

Art Unit
1661



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE one MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Apr 24, 2001.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 6-15 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claims 6-15 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 6) ☐ Other:

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DETAILED ACTION

Claims 6-15 are pending.

Election/Restriction

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 6-10, drawn to wheat flour, classified in class, 530, subclass 372, for example.
 - II. Claims 11-15, drawn to a wheat plant, classified in class 800, subclass 320.3, for example.

The inventions are distinct, each from the other because:

Invention I is unrelated to Invention II. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case, the inventions have different functions where Group I is drawn to wheat flour with a high amylose content, and whereas Group II is drawn to a wheat plant. Flour is milled seed and has different properties depending on the characteristics of the starting endosperm. Flour contains starch as well as fats, proteins, and minerals, because flour is a soft white powder made from the endosperm of certain cereal grains, notably wheat. There are many different types of wheat flour

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depending on the type of wheat plant grown and depending on post harvest handling of wheat. For instance, soft red winter wheat flour lends itself very well to sponge cakes, whereas hard white wheat makes excellent bread flour, and durum wheat makes good pasta flour, based on differences of the endosperms involved. However, soft red winter wheat would not make very good bread flour due to the different properties and components of the flour, especially the α -amylase content, and likewise, durum wheat would not make a good sponge cake flour. Flour may also differ depending on moisture content of the grain and germination condition of the grain. Flour may also be blended or have additives that change the properties. Genotype and environmental by genotype interactions, as well as post handling processes of the grain, cause differences in the seed and thus the resulting flour.

A wheat plant is unrelated to flour, since wheat may be grown for forage, green manure, erosion control, or animal feed, not requiring flour to be made.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification and by their recognized divergent subject matter and because the searches required for Groups I and II are distinct from each other, restriction for examination purposes as indicated is proper.

Applicants are advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

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2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anne Marie Grünberg whose telephone number is (703) 305-0805. The examiner can normally be reached Monday through Thursday from 6:30 a.m. to 4:00 p.m. and alternate Fridays from 7:00 a.m. to 3:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bruce Campell, can be reached on (703) 308-4205. The fax phone number for this group is (703) 308-4242.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0196.

Anne Marie Grünberg
ANNE MARIE GRUNBERG
PATENT EXAMINER